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CONTENTS

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THE WORKMEN'S COMPENSATION LAWS passed by the Legislatures of 1911, synopses of which were given in the last number of this Journal, are receiving the attention of the courts. In six of the ten states the laws are now in effect. In five states, the question of constitutionality is or has been before the courts. In Massachusetts, Washington and Wisconsin the law has been declared constitutional. As the first two states belong to the group which adopted the principle of accumulating an insurance fund in the hands of the state, or under its control, to which employers contribute and from which injured workmen are paid, this plan may be said to have triumphed so far over the alternative plan adopted by a second group of states, under which employers are made directly liable to their workmen for injuries sustained. To this latter group belongs New York, whose law was declared unconstitutional in March of this year.

THE MASSACHUSETTS LAW was brought before the Supreme Judicial Court of that state before it was enacted through an order of the Senate that the opinion of the Justices be required on the questions of law as to whether the bill then before the Senate was, first, in conformity with the provisions of the State Constitution which requires that property shall not be taken from a citizen without due process of law and, second, whether it was in conformity with the Fourteenth Amendment of the Federal Constitution. The court held in its opinion, rendered July 24, 1911, that the rules of law relating to contributory negligence, the assumption of risk and the effect of negligence by a fellow servant were established by the courts and not by the constitution, and, therefore, the legislature might change or do away with them altogether as defences: and that, taking into consideration the non-compulsory character of the proposed act, there was nothing in its provisions which violated the Fourteenth Amendment to the Federal Constitution or which infringed upon any provision of the State Constitution with regard to the taking of property without due process of law.

THE WASHINGTON DECISION ON WORKMEN'S COMPENSATION is extremely interesting as an indication of public opinion in that state. The law was passed on March 14, 1911, and, among other things, appropriated a sum to defray the expenses of the Industrial Insurance Department created to administer the law. While the compensation feature of the law did not go into effect until October first, the Board proceeded to organize and the State Auditor refused to issue his warrants to defray its expenses, on the ground that the act was unconstitutional. On June 17th an application was filed in the Supreme Court for writ of mandamus to compel the State Auditor to issue a warrant. (State ex rel Davis-Smith Co. v. State Auditor, decided September 27, 1911, not yet reported.) The court held that the question of constitutionality could properly be raised by the demurrer of the State Auditor. The act was challenged as unconstitutional on four distinct grounds: (1) that it violated the provisions of the State and Federal Constitution against depriving persons of property without due process of law; (2) that it violated the provision of the State Constitution against granting privileges or immunities to any citizen, class of citizens or corporations, other than municipal, which, upon the same terms, shall not equally belong to all citizens or corporations; (3) that it violated the provision in the State Constitution that property shall be taxed according to its value in money and that taxation shall be equal and uniform; and (4) that it violated the right of trial by jury.

In disposing of the first ground, the court concedes that the statute imposes a liability without fault in that a contribution to the state insurance fund is exacted from all employers of labor in hazardous industries

regardless of whether the injury was caused by the fault of the employer or negligence of the employe, and also, since the contributions must be made whether or not the employer's own workmen are injured, one employer might be said to be held liable for the obligations of another. The court justifies this under the police power of the state to promote the public safety, health and general welfare and holds it to be a reasonable and constitutional regulation, citing in support Sec. 4585 of the Revised Statutes of the United States and numerous railroad cases, as well as the United States Supreme Court decisions on the Oklahoma bank guaranty law. The Court quotes as follows from its own remarks in a previous case: "Law is or ought to be a progressive science. While the principles of justice are immutable, changing conditions of society and the evolution of employment make a change in the application of principles absolutely necessary to an intelligent administration of government. . . . . The changing conditions of society have made an imperative call upon the state for the exercise of . . . . . additional powers, and the welfare of society demands that the state should assume these powers, and it is the duty of the Court to sustain them whenever it is found that they are based upon the idea of the promotion and protection of society."

Passing to the second objection, the Court quotes copiously from numerous decisions defending the act against the charge of class legislation but reserves decision on some features of the law relating to the benefits of certain employes until such time as they come before the Court in the course of the act's administration. These features may be eliminated, it points out, without destroying the entire act.

In answer to the third ground for objection, it is held that the contributions of employers are not in the nature of a tax, but rather in the nature of a license fee, and may therefore be imposed upon a class of industries rather than upon the whole so long as there is some reasonable ground for making the distinction. The sums exacted from the several industries named in the act, the Court thinks, may be treated as partaking both of the nature of a license for revenue and regulation, and as such it finds nothing in the principle inimical to either the State or Federal Constitutions.

As to trial by jury, the Court enters into a somewhat lengthy discussion of the shortcomings of the jury system of making awards. It holds that the relation between employer and employee being one of contract, the state may make it a condition of the contract that the employe shall accept a fixed sum for any injury he may receive, but acknowledges that there is no direct authority supporting the contention that the right of trial by jury may be thus taken away. It also holds that the fourth objection may be answered in another way. The State Constitution does not undertake to define what shall constitute a cause of action, nor prohibit the legislature from so doing. The cause of action having been taken away in certain cases, and the right of jury trial being incidental only to causes of action recognized by law, it follows that the right of jury trial is no longer involved in such cases.

The Court refused to recognize the authority of the Court of Appeals of New York in the case of Ives v. South Buffalo R. Co., 201 N. Y. 271, which held the workingmen's compensation law of that state to be unconstitutional, although it concedes that the principle embodied in both statutes is the same and that the case is in direct authority against the position they have taken. Referring to the New York case the Court delivers itself as follows: "We shall offer no criticism of the opinion. We will only say that, notwithstanding the decision comes from the highest court of the first State of the Union, and is supported by a most persuasive argument, we have not been able to yield our consent to the views there taken."

In a concurring opinion, Chadwick J. points out that the decision of the Court on the question of trial by jury is binding on no one, not even the Court itself, but must await final decision until such time as it is properly before the Court.

THE WISCONSIN WORKMEN'S COMPENSATION LAW was held constitutional by the Supreme Court of that State on November 14, 1911 (Borgnis et al vs. Falk Company, not yet reported). The decision is upon the main principles of the law, disregarding minor features which, if unconstitutional, would not affect the act as a whole. Early in the opinion the Court indicated its attitude in these words: "When an eighteenth century constitution forms the charter of liberty of a twentieth century government, must its general provisions be construed and interpreted by an eighteenth century mind surrounded by eighteenth century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of Procrustes."

In answering the contention that the act was void because it abolished the common law defences in non-hazardous trades contrary to public policy, the Court held that a constitutional statute cannot be contrary to public policy; that it is not contrary to the constitution for the legislature to abolish the common law defences in non-hazardous as well as hazardous trades. There may be a less persuasive reason for the change in the former class of industries, but there is no ground constitutional or otherwise why they may not be abrogated altogether. Being of judicial origin the common law defences may be changed or abolished by the legislature. In reply to the contention that the act vests judicial power in the Industrial Commission which has charge of its administration, and hence is unconstitutional because it takes judicial power from the courts, the opinion holds that the Industrial Commission has no further or greater powers than other administrative bodies or commissions, and that the question of its jurisdiction is one always open to the courts for review. The contention that the act is coercive as well as several minor contentions are dismissed by the court as being conjectural. The objection that the act compels employer and employee coming under its provisions to wholly stipulate away their rights to resort to the courts is answered by the distinction that the Industrial Commission has jurisdiction only as to the extent of an injury or disability and the like, but any controversy as to fundamental rights, namely, whether the parties have consented to come under the act, or as to whether the injuries resulted from willful misconduct, are still open to the court upon appeal.

FOR THE BENEFIT OF OUR READERS who desire additional copies of The Corporation Trust Company Journal No. 27, containing synopses of the workmen's compensation laws passed in 1911, by the legislatures of California, Illinois, Kansas, Massachusetts, Nevada, New Hampshire, New Jersey, Ohio, Washington and Wisconsin, we beg to announce that a limited quantity is still on hand and copies will be mailed to any address on request.

THE INITIATIVE AND REFERENDUM appear to be growing in popular favor. Ten states have amended their constitutions to provide for this new method of legislation; in seven other states proposed constitutional amendments embodying such features are to be voted on at the next general elections. Interest in the subject is exhibited in almost every state and a widespread agitation for the new system is being carried on throughout the country. The adoption of the initiative and referendum creates a double source of legislation and will greatly increase the difficulties of keeping accurately informed of new laws governing the conditions under which business is to be carried on.

IN OREGON the validity of the initiative and referendum amendment to the constitution of that state has been attacked by the Pacific States

Telephone and Telegraph Co. The suit was brought to recover 2% of the company's gross receipts for 1906 exacted by an initiative petition adopted in accordance with the amendment. The Supreme Court of Oregon upheld the constitutionality of the amendment, whereupon an appeal was taken to the United States Supreme Court. Oral argument was heard before this Court on November 3rd. The decision will be one of the most important to be handed down during the present term of the Court.

THE STATE OF ARKANSAS finds itself unexpectedly face to face with its new referendum law. On June 29, 1911, the Governor approved the so-called Turner-Jacobson bill revising the entire revenue laws of the State. The act provides that it shall take effect and be in force from and after its passage, and requires, among other things, that the assessors should commence their duties thereunder in June, 1911. The Arkansas Tax Commission having proceeded at once to carry out the provisions of the new law, filed a petition in the Chancery Court to compel an assessor to assess properties in accordance with their instructions. The Court held in an oral opinion that the initiative and referendum amendment to the constitution was self executing and need no enabling act to put it in force. Since the act in question does not contain a clause showing that it is "for the immediate preservation of the public peace, health and safety" it is subject to the vote of the people and must await the result of the referendum, petitions for which have already been filed with the Secretary of State.

THE RULES OF THE UNITED STATES SUPREME COURT have been amended in several respects by an order promulgated October 23, 1911. Section 2 of Rule 6 is amended so as to allow only forty-five minutes on each side instead of one hour, as formerly, to the argument of a motion. Section 5 of the same Rule now provides that if the Court concludes that a case is of such a character as not to justify extended argument, it may order the case transferred for hearing to a summary docket. The hearing of the cases on such docket will be expedited, the Court providing from time to time for such speedy disposition of the docket as the regular order of business may permit. On the hearing of such cases one-half hour will be allowed each side for oral argument. Rule 22, Sec. 3 is amended by reducing the time of oral arguments from two hours to one and one-half hours on each side in cases on the regular docket, with a further reduction to forty-five minutes only on each side in cases certified from the Circuit Court of Appeals involving solely the jurisdiction of the court below and in cases under the Act of March 2, 1907, 34 Stat. 1246. It has been apparent for some time that action such as this would be necessary on the part of the Court in order to dispose of the immense number of cases on the docket. No less than 875 cases are now before the Court.

AN ILLEGAL ATTEMPT TO PAY DIVIDENDS is how a recent decision of the New Jersey Court of Errors and Appeals characterizes an issue of certificates of indebtedness by a New Jersey corporation. (Strickland v. National Salt Co. et al, decided Nov. 20, 1911—not yet reported.) The National Salt Company contracted to purchase the capital stock of the United Salt Company, paying therefor with shares of its own capital stock and in addition a cash sum equal to the amount expected to be paid in dividends on such stock for a period of five years. This cash sum was to be paid in ten semi-annual instalments and was secured

by an issue of certificates of indebtedness of the National Company, pledging as collateral the stock of the United Company acquired by the transaction. The former stockholders of the United Company, on the other hand, in consideration for the certificates of indebtedness, issued to them, agreed to waive their right to dividends on the National Stock, likewise issued to them, it being stipulated that the amounts declared as dividends on such stock should be applied to the payment of the certificates of indebtedness. The Court holds that the transaction was not in fact and in substance an exchange of one stock for another with a cash bonus, but was in effect a promise to pay the amount of dividends agreed upon whether they were earned or not, and therefore in contravention of Sec. 30 of the New Jersey Corporation Act which provides that dividends shall not be made except from surplus or net profits and capital stock shall not be divided, withdrawn, paid to stockholders in any way or reduced except according to law. The Court held that these certificates of indebtedness were not negotiable instruments since, in addition to the promise to pay money, they contained an agreement to keep free from incumbrance the property of the United Company on which the value of the collateral security depended. The receiver of the National Salt Co. was permitted to avail himself of the illegality of the certificates of indebtedness although the corporation had received a benefit from the illegal transaction.

VIOLATING THE ANTI-TRUST LAWS OF MISSOURI is the ground for the conditional ouster of the International Harvester Company of America from that State. The decree does not go into effect until March 1, 1912, and if in the meantime the company pays a fine of $50,000 and files proof of its willingness to sever all connections with the International Harvester Company of New Jersey and other corporations constituting the harvester trust, then in that event the judgment of ouster will be suspended indefinitely during good behavior. That is, the court retains jurisdiction to the end that absolute ouster may be enforced at any future time if it is shown to the court that the company has violated the conditions of this judgment. There seems to have been no dispute about the essential facts in this case; the state contending that the acts were done for the purpose of suppressing competition and regulating prices; and the contention on the other hand being that the purpose was to bring about a more rational and conservative method of conducting business, with no purpose of creating a monopoly or suppressing competition or regulating prices, in the sense that those terms are used in the statute. After reviewing the details of the formation of the harvester trust in 1902, the court decides that it was an arrangement with the "design and view of lessening full and free competition." This brings it within the ban of the anti-trust law of Missouri, which prohibits not only agreements or arrangements which tend to lessen competition but also those made with "a view to lessen full and free competition." It matters not whether the trust was good or bad, reasonable or unreasonable, so long as it was formed for the purpose and possessed the power of suppressing competition it violated the law. The court said in part: "Aggregations of large properties by bona-fide purchasers in the usual business way do not fall under the ban of the statute, but when the would be sellers have to erect a straw man for the purchaser, the credulity of the court is strained, when we are asked to brand it as a bona-fide transaction."

The practice of doing business by subsidiary companies or sales companies is referred to in the opinion of the chief justice, who holds that where a parent company is not permitted to do business in Missouri it may not legally send a subsidiary company into the state to do that which it cannot do in its own name.

FOREIGN CORPORATIONS IN CALIFORNIA which have failed to comply with the requirements of the laws of that State relating to

the admission of foreign corporations, are subjected to a further disability by Chapter 591 of the Laws of 1911, which prohibits them from acquiring or conveying any legal title to any real estate within the State. Formerly the disability related only to maintaining any suit or action in any of the courts of the State and to receiving the benefits of the statute of limitation. Inasmuch as one of the requirements of the State of California is that every foreign corporation shall file a certified copy of its charter in each county in which it owns property, it would seem that by the amendment of 1911 the failure of a corporation to comply with this formality might seriously endanger the title to real estate held by it. As this requirement is often neglected after a corporation has entered the State and subsequently extends its business operations and property holdings into different counties, we would suggest to counsel of corporations doing business in California the advisability of taking appropriate action in cases where their clients have neglected to comply with the formality mentioned.

THE SIXTY-SECOND CONGRESS, second session, commences December 4, 1911. The 17,337 bills introduced during the recent special session may be taken up for consideration at any time during this coming session. Many of them affect corporations doing interstate business. The Tariff Board, National Monetary Commission and Employer's Liability and Workman's Compensation Commission will make reports to this Congress and President Taft is expected to renew his recommendation for the passage of a Federal Corporation Bill, so that much important legislation is anticipated. Our Legislative Department has completed arrangements for handling the immense volume of information it will be called upon to distribute to subscribers during this session.

WE BEG TO ANNOUNCE a recent change of officers of this company.

Mr. Warren N. Akers, formerly manager at Wilmington is now in charge of our office at Washington, D. C. His connection with The Corporation Trust Company extends over a period of nine years, during which time he was successively connected with our Jersey City and New York offices, served as manager of our Boston office and opened and conducted our Wilmington office.

Mr. E. E. McWhiney, formerly manager at Philadelphia, succeeds Mr. Akers at Wilmington. Mr. McWhiney has been with the company for eight years, being connected with the New York office prior to his transfer to Philadelphia.

Mr. J. Disbrow Baker succeeds Mr. McWhiney as manager of our Philadelphia office after a service of seven years in our Jersey City and New York offices.

Each of these officers brings to his new position a thorough experience in the business of the company and is prepared to extend all of its facilities and services to members of the bar.